



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

NOV 5 1975

LEGISLATIVE REFERRAL MEMORANDUM

To: Legislative Liaison Officer

Department of Agriculture
Department of Commerce
Department of Defense
Dept. of Health, Education,
and Welfare
Dept. of Housing and Urban
Development
Dept. of the Interior
Dept. of Labor
Dept. of State
Dept. of Transportation
Dept. of the Treasury
ACTION
Agency for International
Development
Central Intelligence Agency ✓
Civil Service Commission

Energy Research and Development Admin.
Federal Energy Administration
Federal Trade Commission
General Services Administration
National Aeronautics and Space Admin.
Postal Service
Railroad Retirement Board
Tennessee Valley Authority
U.S. Information Agency
Veterans Administration
General Accounting Office
Administrative Office of the
U.S. Courts
Domestic Council Committee on the
Right of Privacy
Environmental Protection Agency

Attached, for your information, is a copy of the Administration's draft bill to amend Section 459 of the Social Security Act, dealing with garnishment of certain Federal payments.

The bill was transmitted by the Department of Justice on October 28, 1975.

Naomi R. Sweeney

Naomi R. Sweeney, for
Assistant Director for
Legislative Reference

Attachment

NOV 2 3 00 PM '75

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Office of the Attorney General
Washington, D. C. 20530

OCT 28 1975

The Speaker
House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

Enclosed for your consideration and appropriate reference is a legislative proposal "To revise the statute authorizing the garnishment of payments of remuneration for employment for the purpose of complying with certain child support and alimony payment orders."

On January 4, 1975, the President signed into law P.L. 93-647, the Social Services Amendments of 1974, subsection 101(a) of which added a new section 459 to the Social Security Act which provides that Federal payments based on remuneration for employment including payments to military personnel, are subject to garnishment in support and alimony cases. However, the statute does nothing more; it provides no authority for implementing regulations; it makes no provision for serving the United States with legal process; it fails to address various problems including practical constraints resulting from computerized payrolls; it does not describe the nature of legal process which may be served upon the Government nor the specific types of Government payments which may be garnished.

Since section 459 became effective on January 1, 1975, the Department of Justice has been inundated with complaints from beneficiaries of support and alimony orders, their counsel, and agencies of the Government - all of whom are uncertain of how to proceed under the present section 459. In order to clarify the application of the present law, the Department of Justice recommends the enactment of the attached draft of a revised section 459.

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Subsection (a) waives the Government's immunity from suit for garnishment of certain child support and alimony payments. Subsection (b) authorizes the issuance of regulations to implement the statute.

Many private practitioners have been in a quandry as to how to effect service of process in order that their clients may obtain the benefit of the garnishment statute. Subsection (c) of the attached draft removes this uncertainty and permits inexpensive and expedited service by registered or certified mail return receipt requested, or by personal service if this is preferred. The nature or character of the payment sought would have to be clearly specified in legal process. Government agencies would designate agents for service of process and publish their designations and the data required to identify the individuals affected and their accounts. All such designations and data requirements would be published at a single point in title 5 of the Code of Federal Regulations so that it would be conveniently compiled and easy for the private practitioner to locate. Service on the individual affected is also required, when possible, in order to provide the United States and its agents and employees effecting payment with a good acquittance on payment and to avoid possible dual liability. Of course, personnel in the military service would continue to receive the protection of the Soldiers' and Sailors' Civil Relief Act.

Subsection (d) of the attached draft revision specifically authorizes appropriate responses to interrogatories by the agency served. This will further facilitate payment under the statute and allay concerns of the employees of Government agencies who will participate in responding to such interrogatories.

The Federal Government is so large and its activities and offices are so numerous that a reasonable time for response is required to permit identification of the proper account, ascertainment of the sufficiency of process, and consultation with counsel. The thirty-day period provided

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in subsection (e) of the attached draft is a minimum figure, though the time for response may be extended by failure of the petitioner to furnish proof of service on the individual affected or justify failure to effect service on that person.

Subsection (f) deals with a serious problem that has been encountered by the affected agencies. Generally, disbursements of regular periodic payments of remuneration for employment are computerized. However, process served upon an agency may unreasonably require that a pay check of a certain date be held up when in fact such process was not received in time to permit the reprogramming of the computer run affecting that particular check. In other instances a writ may call for deductions which are more or less frequent than the times the individual is actually paid. To avoid very substantial additional costs to the Government and serious inconvenience or hardship to thousands of others affected by the computerized payrolls, subsection (f) would permit deductions as these can be properly and reasonably programmed into the regular agency payment cycle. In sum, agencies may vary the amount and timing of withholdings and payments to avoid disruption of regular payment cycles and to fit the realities of computerized payrolls.

Subsection (g) eliminates any doubt as to which State's law should be applied in determining relevant deductions and exemptions. In some jurisdictions deductions and exemptions otherwise provided by State law are lost unless an affirmative claim of entitlement thereto is asserted. Many personnel serving overseas or at remote sites will be unable to assert their entitlement to deductions and exemptions otherwise authorized by State law. Subsection (g) would protect such an individual, who is not served pursuant to subsection (c), by limiting withholding under this statute to 50 percent of the individual's net remuneration or such lesser sum as is authorized by state law, and by preserving retirement and other regular deductions from gross remuneration for employment.

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Subsection (h) protects agency employees handling matters under this section from the risk of liability for their good faith actions. Payments made pursuant to process regular on its face and after proof of service upon the individual are fully validated. If the individual is not served and he sues the United States, he has the burden of establishing that he could have successfully defeated the attempt to garnish or attach the payment due him on the merits had he been properly served.

Subsection (i) provides a needed mechanism to resolve the inevitable disputes which arise when two or more parties seek to attach the same payments when legal process issues from more than one source.

Definitions are included in subsection (j) to explain the meaning of terms used in the existing statute and reused in the proposed revision. The definition of "agency" spells out the broad coverage of the statute. The term "alimony" is defined to include spousal support in keeping with the increasing State use of "support" terminology instead of "alimony." Cf. Sec. 4801 of the Civil Code of Calif. Uncertainty whether agencies can pay court-ordered attorneys' fees, interest, and court costs is removed by the definition of "child support" and "alimony". Attorneys' fees actually incurred in obtaining or enforcing a support order, interest on past-due payments, and court costs would only be payable if authorized by State law but agency officers responding to legal process would only effect withholdings for the payment of such items when they are specifically covered by court order.

Representatives of various agencies have been uncertain about the meaning of the term "legal process." A few states have provided by statute for what amounts to a garnishment or order to withhold and deliver issuing from an administrative agency. Such process would be honored solely as a garnishment and solely for the amount payable, provided service is made on the individual affected so that the Government may be sure of a good acquittance if it makes payment. Absent such personal notice, procedural due process may be in question. It is not intended that the penalty provisions of such States statutes would apply to the United States or its employees responding to such legal process.

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Subsection (j)(4) provides a definition of the term "remuneration for employment" to eliminate expensive and time-consuming litigation over the meaning of this term. The list of payments in that subsection is not coextensive with the types of payments which we believe would be garnishable under the existing law. However, the items listed are well understood, cover the bulk of payments directly related to Federal employment, and can be garnished without undue administrative difficulty. Attached to this letter is a list of additional payments which are, or conceivably could be, subject to garnishment under the existing law. They were not included in Subsection (j)(4) because in each case the agencies responsible for these payments or similar payments recommended exclusion. The Congress may wish to include one or more of these payments within the definition of "remuneration for employment." If so, we suggest that the legislative intent be made clear in the interest of avoiding litigation.

We have assumed that the Congress would not wish to include within the definition of "remuneration for employment" Government reimbursements for travel, per diem, and other expenses incurred by employees; Federal income tax rebates and refunds; and payments to individuals through independent contractors or State or local agencies.

I recommend the introduction and prompt enactment of this proposed revision. The amendments should result in some net savings in legal and administrative expenses to the Government although the amount of such savings cannot readily be estimated.

The Office of Management and Budget has advised that there is no objection to the submission of this legislative proposal and its enactment would be consistent with the objectives of the Administration.

Sincerely,

The Attorney General

Enclosure

LIST OF ADDITIONAL PAYMENTS

- a. Lump-sum annual leave payments.
- b. Overseas support allowances and pay differentials (including civilian, uniformed services and foreign service personnel).
- c. Domestic and foreign volunteer in-service allowances or stipends (including ACTION and Job Corps participants).
- d. End-of-service stipends and severance pay (including ACTION and uniformed services personnel).
- e. Railroad retirement unemployment and sickness benefits.
- f. Federal Employees Compensation Act payments.
- g. Longshoremen's and harbor workers' disability payments.
- h. Black Lung compensation payments.
- i. Benefit payments to veterans.
- j. OASDI benefits payable under Title II of the Social Security Act.

..... CONGRESS
..... SESSION

H. R.

(Note.—Fill in all blank lines except those provided for the date and number of bill.)

IN THE HOUSE OF REPRESENTATIVES

Mr. introduced the following bill; which was referred to
the Committee on

A BILL

To revise the statute authorizing the garnishment of payments of remuneration for employment for the purpose of complying with certain child support and alimony payment orders
(Insert title of bill here)

- 1 *Be it enacted by the Senate and House of Representatives of the*
- 2 *United States of America in Congress assembled, that*
Section 459 of the Social Security Act (42 U.S.C. 659)
is amended to read as follows:

§459(a). Notwithstanding any other provision of law, moneys the entitlement to which is based upon remuneration for employment due from, or payable by, the United States of America or an agency thereof to any individual (except judges appointed pursuant to Article III of the Constitution) shall be subject to legal process brought for the enforcement, against such individual, of his legal obligation to provide child support or make alimony payments as if the United States were a private person.

(b) Regulations shall be promulgated to implement this section and to facilitate compliances with legal process for the payment of child support and alimony. The _____

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shall issue such regulations for agencies within the Legislative Branch and individuals receiving remuneration for employment therefrom. The _____

_____ shall issue such regulations for agencies within the Judicial Branch and individuals receiving remuneration for employment therefrom. The Civil Service Commission shall issue such regulations for all other agencies and individuals receiving remuneration for employment from the United States, except that the Postmaster General shall issue regulations for the Postal Service and all individuals receiving remuneration for employment therefrom.

(c) Service of legal process brought pursuant to this section for the enforcement of an individual's obligation to provide child support or make alimony payments shall be effected as herein provided. Service of such process shall be accomplished by certified or registered mail return receipt requested or by personal service upon the appropriate agent for service of process designated to receive such process for the agency making the payments sought to be reached and shall expressly recite that it has been issued for the purpose of enforcing an alimony, or child support obligation, and shall be accompanied by a certified copy of the order of the court or administrative authority establishing such alimony or support obligation. If an agent for service of process has not been designated for an agency, service may be made upon the head of the agency. Such process shall specify the nature or character of the payment sought to be reached and the amount to be withheld therefrom and shall be accompanied by sufficient data to permit

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prompt identification of the individual receiving remuneration for employment and his account on the agency's records. Each agency head shall publish in the appendix to the regulations promulgated by the Civil Service Commission pursuant to this section, (1) his designation of an agent or agents for service of process by title of position, mailing address and telephone number, and (2) the data reasonably required to permit prompt identification of the individual and his account. If an individual is receiving remuneration for employment from more than one agency, separate process shall be served on each agency together with notice as to the identity of any other agency similarly served and the nature or character of the payment sought to be reached therefrom. A copy of the legal process served upon an agency shall be served by one of the methods provided herein upon the individual whose remuneration for employment is sought to be reached in sufficient time for the individual to challenge such action with the appropriate court or administrative authority, if he wishes to do so. Proof of such service or an affidavit on personal knowledge showing the reason why such service could not be effected on the individual concerned will be served upon the agency affected and the agency may delay its response to legal process until such proof or affidavit is served on it.

(d) An agency head may respond to relevant interrogatories, if authorized by the law of the state in which the legal process will issue, prior to formal issuance of legal process, upon a showing of the applicant's entitlement to child support or alimony payments from the individual identified as provided in subsection (c). No agency employee whose duties include responding to such interrogatories shall suffer civil or criminal liability or disciplinary action under or because of the Privacy Act of 1974 (Public Law 93-579)

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(e) Agency heads shall have at least thirty days from the effective date of service within which to respond to interrogatories or to legal process seeking the payment of child support or alimony obligations from remuneration for employment.

(f) Agencies shall not be required to vary their normal pay and disbursement cycles to comply with legal process for the payment of child support and alimony obligations.

(g) An individual whose remuneration for employment is subject to legal process for the payment of child support or alimony pursuant to this section shall be entitled to the deductions and exemptions authorized by the law of the state in which the order for the payment of child support or alimony was initially entered. If proof of service on an individual is not served upon the agency as required by subsection (c) hereof, not more than fifty percent of his net remuneration for employment payable by the agency, or such lesser amount as may be provided by the law of the state in which the order for the payment of alimony or support is initially entered, may be withheld to honor legal process. For the purpose of determining net remuneration for employment there shall be deducted from the gross remuneration for employment due for a normally observed payment period, if actually deducted, (1) proper State, Federal and local income tax withholdings for the individual counting the correct number of dependents, (2) health insurance premiums, (3) normal retirement deductions without supplementary coverage, and (4) life insurance premiums normally deducted for the salary or pay level involved without supplementary coverage.

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(h) Payments made pursuant to legal process regular on its face, which are made in compliance with this section, after receipt of proof that the individual concerned was also served as provided in subsection (c) hereof, shall be valid dispositions of remuneration for employment if the individual does not successfully challenge such legal process, and the United States, the agency and the person making and authorizing such payments shall not be liable for having made such payments or be required to make duplicate payments. In any case in which payments pursuant to this section are made after receipt of an affidavit showing good reason why the individual could not be served, the agency and the persons making or authorizing payment pursuant to legal process shall be exonerated from liability to such individual and, in any action by such individual against the United States to recover the sum paid out in response to such process, such individual shall have the burden of establishing that he could have successfully defeated the attempt to garnish or attach the payments due him on the merits had he been properly served.

(i) In the event an agency is served with legal process from more than one court or source seeking to reach the remuneration for employment of an individual, such proceedings may be removed or transferred of right to any appropriate single United States district court. Removal or transfer shall be accomplished in accordance with chapter 89 of title 28 of the United States Code and 28 U.S.C. 1404, insofar as these statutes may be appropriate and are not inconsistent with this section, and the proceedings shall continue as consolidated proceedings. Administrative proceedings referred to in subsection (j) (3) and orders and process issued in connection therewith shall

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be subject to removal pursuant to this subsection in the same manner as court proceedings. The district court shall have authority to allocate payments of remuneration for employment or determine priorities of payment as may be appropriate in the circumstances.

(j) The following definitions shall govern the application of this section.

(1) The term "agency" includes all departments, administrations, and instrumentalities in the Executive Branch of the United States of whatsoever kind, all independent establishments of the United States, including the Postal Service, and all administrations, authorities, boards, commissions, councils, services and instrumentalities of the Federal Government of whatsoever kind, all wholly-owned Federal corporations, the Congress of the United States including the General Accounting Office, the Library of Congress, the Government Printing Office and the Botanic Garden, and the Federal courts including the Administrative Office of United States Courts and the Federal Judicial Center.

(2) The word "alimony" shall include spousal support, no matter how denominated, that arises out of any decree, order or judgment providing spousal or child support. The words "child support" and "alimony" may include court-ordered attorney's fees, interest and court costs by a court of competent jurisdiction.

(3) The term "legal process" means (i) an order, writ, summons or other similar process issued from a court of competent jurisdiction within the United States, in the nature of garnishment, attachment, or involuntary assignment, against

the United States of America to obtain the remuneration for employment payable to an individual, when the purpose of such garnishment, attachment, or assignment is the satisfaction of a court-ordered child support or alimony obligation, and (ii) an order or garnishment-type process issued by State or local administrative authority when specifically authorized by State statute and such procedure is applicable alike to private employers. Such administrative process shall not be considered "legal process" and will not be honored if there is no proof of service on the individual whose remuneration for employment is sought to be reached in accordance with subsection (c).

(4) The term "remuneration for employment" means wages, salary and pay of civilian employees and uniformed services personnel of the United States; regular retirement and disability retirement benefits payable to such personnel; cash incentive awards and production bonuses payable to such personnel; and cash subsistence and quarters allowances paid to such uniformed services personnel.

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ROUTING AND RECORD SHEET

SUBJECT: (Optional)

FROM:

Legislative Counsel
7D35 HQ

EXTENSION

NO.

STAT

DATE

10 November 1975

TO: (Officer designation, room number, and building)

DATE

OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1. OGC

Attn: [REDACTED]

7D07 HQ

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According to this referral memorandum, the Justice draft bill on garnishment has been submitted to the Congress. I will keep you informed of its progress there.

STAT

[REDACTED]
Assistant Legislative Counsel